

AGREEMENT

made as of the _____ day of _____ in the year of _____, AD.

BETWEEN the Owners:

CITY OF KILLEEN
101 N. College Street (76541)
P.O. Box 1329
Killeen, Texas 76540-1329
Attn.: City Manager
Tel: 254-501-7847
EMAIL: LHINKLE@KILLEENTEXAS.GOV

RECREATION SERVICES DEPARTMENT
Attn: HEATHER, BULLER, RECREATION SERVICES
INTERIM EXECUTIVE DIRECTOR
Tel: 254-501-8841
EMAIL: HBULLER@KILLEENTEXAS.GOV

and the Contractor:

Heartland Park & Recreation, LLC
111 Blaine Trail
Longview, TX, 75605
PO BOX 505
White Oak, Texas, 75693
Attn: Sean Michael Spenser, PRESIDENT
Tel: 903-297-6624
EMAIL: JANA@HEARTLANDPLAY.COM

The Project is:

**AA LANE PARK PLAYScape AND SHADE STRUCTURE
WITH TILE SURFACE #20.07-1
400 48TH STREET, KILLEEN, TX 76543**

Contracting Officer:

**LESLIE K. HINKLE, EXECUTIVE DIRECTOR OF
COMMUNITY DEVELOPMENT**
Tel: 254-501-7847
Email: LHINKLE@KILLEENTEXAS.GOV

Architect/Engineer:

NONE

Project Shop Drawings by:

NONE

The Owner and Contractor agree as set forth below:

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Terms, Conditions (General and Supplementary), and Requirements of Federally funded Community Development Division Projects, Drawings, Specifications, Bidding Terms, Conditions and Requirements, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9. Contractor must submit Certificates of Insurance, and Payment and Performance Bonds in the amounts required under the Bidding Terms, Conditions, and Requirements for Federally Funded Community Development Division Projects, Special Conditions for Community Development Division Contracts and General Conditions of the Contract for Construction-Community Development Block Grant and Home Investment Partnerships Act Programs

ARTICLE 2
THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 25 of the General Conditions of the Contract for Construction is measured, and shall be the date indicated in a notice to proceed to be issued by the Owners.

Work to commence upon issuance of Notice to Proceed.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than **eighty five (85) days after commencement with completion expected not later than ninety five (95) days after commencement**, subject to adjustments of this Contract Time as provided in the Contract Documents.

There will be a liquidated damage charge to the Contractor of \$300 per calendar day for each day the project is not completed beyond the above stated limit.

ARTICLE 4
CONTRACT SUM

4.1 The Owners shall pay the Contractor in current funds for the Contractor's performance of the Contract for the Contract Sum of **ONE HUNDRED FOURTY THOUSAND, ONE HUNDRED SEVENTY EIGHT DOLLARS AND NO/100, (\$140,178.00)** dollars, subject to the following funding sources listed below and to additions and deductions as provided in the Contract Documents.

4.1a Financial obligations associated with the Contract Sum are limited to the following dollar amount and source of funds: **FY2021/PY 2020-2021 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG), \$140,178.00.**

4.2 The Contract Sum is based upon the following alternatives, if any, which are described in the Contract Documents and are hereby accepted by the Owners: **Acceptance and approval of bidder's submission for the Written Bid Amount according to the project Specifications.**

Lump Sum Price, if any, is as follows: ONE HUNDRED FOURTY THOUSAND ONE HUNDRED SEVENTY EIGHT DOLLARS AND NO/100, (\$140,178.00).

ARTICLE 5
PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Owners or Owner Representative by the Contractor and Certificates of Payment issued by the Owner or Owner Representative, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and in accordance with paragraph 27 of the General Conditions of the Contract for Construction.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.3 The Owner shall make payments to the Contractor within thirty (30) days of receipt of Application.

5.4 Each Application for Payment shall be based upon the schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Owners may require. This Schedule, unless objected to by the Owners, shall be used as a basis for reviewing the Contractor's Application for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total

Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of **ten percent (10%)**. Pending final determination of cost to the Owner of approved changes in the Work, amounts not in dispute and authorized may be included if the Contract Sum has been adjusted by a Change Order;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitable stored off the site at location agreed upon in writing), less retainage of **ten percent (10%)**;

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate of Payment as provided in Paragraph 27 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to **Ninety-five (95%)** percent of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Paragraph 27 of the General Conditions of the Contract for Construction.

5.8 Reduction or limitation of retainage, if any, shall be as follows: **NONE**

ARTICLE 6 **FINAL PAYMENT**

Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Paragraph 20 of the General Conditions of the Contract for Construction, and (2) Appropriate payroll documents must have been submitted and obligations must have been met, and satisfactory evidence to include either a "Release of Mechanic's and Materialman's Lien" or an "Affidavit of Payment of Debts and Claims" from subcontractor(s) or supplier(s), and (3) to satisfy other requirements, if any, which necessarily survive final payment; and (4) a final Certificate of Payment has been issued by the Owner or Owner Representative; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate of Payment.

ARTICLE 7 **MISCELLANEOUS PROVISIONS**

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due, to contractor, at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Other provisions, attached hereto and incorporated by reference for all purposes, which are directly attributed to this contract, the Contractor will comply with:

- a. applicable sections of the General Conditions of the Contract for Construction Community Development Block Grant and Home Investment Partnerships Act Program;
- b. the award of subcontracts to small business firms, minority firms, women's business enterprises and labor surplus area firms, whenever possible;
- c. certification regarding debarment, suspension and other responsibility matters;
- d. submitted Affirmative Action Plan
- e. Contractor will not engage in business concerns for construction, other services, supplies, materials or equipment, with any company/companies having operations or contracts or are participating in scrutinized business operations with Iran, Sudan or a foreign terrorist organization as defined in Government Code Sections 807.001(10) and 2270.001(9) or may be identified on a list maintained by the Texas Comptroller's office under Government Code Sections 807.051, 2252.153 or 2270.0201.
- f. Contractor will not boycott Israel, as defined in Texas Government Code section 808.001 meaning; refusing to deal with, terminating business activities with, or taking any action that is intended to penalize, inflict economic harm on or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

ARTICLE 8

DEFAULT

8.1 Whenever Contractor or Owner shall fail to keep, perform, or observe any of the covenants, agreements, terms, or provisions contained in this contract and Contractor or Owner shall fail to commence and take such steps as are necessary to remedy the same within ten (10) days after Contractor or Owner shall have been given a written notice specifying the same, Contractor or Owner may pursue their respective rights and remedies provided under law.

ARTICLE 9

TERMINATION OR SUSPENSION

9.1 The Contract may be terminated by the Owner or the Contractor as provided in Paragraph 34 of the General Conditions of the Contract for Construction.

9.1.2 Owner may terminate the contract for cause for Contractor's failure to perform work, non-adherence to established federal, state and/or local laws, or a violation of any of the contract

provisions. Upon written termination, Owner may exclude Contractor from the Project site and pursue any remedies available to him.

9.2 The Work may be suspended by the Owner as provided in Paragraph 30 of the General Conditions of the Contract for Construction.

ARTICLE 10

ENUMERATION OF CONTRACT DOCUMENTS

10.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

LIST OF CONTRACT DOCUMENTS (may vary, as applicable)

Invitation and Advertisement for Proposals

Addendum #1 dated August 25, 2022

Conditions of the Contract

Bidding Terms, Conditions, and Requirements for Federally Funded Community Development Division Projects

Special Conditions for Community Development Division Contracts

General Conditions of the Contract for Construction-Community Development Block Grant and Home Investment Partnerships Act Programs

Bid Forms

Bidder Check List

Receipt and Acknowledgement of Contract Conditions

Bid Proposal Form-Unit Price Contract

Certificate of Corporate Resolution

Texas Workers' Compensation Insurance Coverage

Section 3 Employment Opportunities Clause

Contractor Certification for Subcontracting with Small and Minority Firms, Women's

Business Enterprises, and Labor Surplus Area Firms

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Wage Scale: General Decision#: (General Decision Number)

10.1.2 Construction specifications:

Applicable specifications associated with PROJECT NAME, PROJECT NUMBER at the applicable geographic location; LIST ALL SPECIFICATIONS SECTIONS.

10.1.3 Other documents, if any, forming part of the Contract Documents are as follows: **AS APPLICABLE**

ARTICLE 11

GOVERNANCE FOR LITIGATION PURPOSES

11.1 This agreement shall be governed and construed according to the laws of the State of Texas. Venue for the purposes of any and all lawsuits, causes of actions, claims, or disputes shall be in Bell County, Texas.

IN WITNESS WHEREOF, the parties to these presents have executed **two (2) originals** of this contract, one original to be maintained by the City of Killeen and one original to be maintained by the CONTRACTOR, in the year and day first above mentioned.

OWNERS

CONTRACTOR

KENT CAGLE, CITY MANAGER

City of Killeen
Killeen, Texas

CONTRACTOR PRESIDENT NAME
HEARTLAND PARK &
RECREATION, LLC
White Oak, Texas

(Date)

(Date)

ATTEST

(Signature)

CONTRACTOR'S ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, A Notary Public, on this day personally appeared _____ known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purpose of and consideration herein expressed, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, _____.

Notary Public, in and for the State of Texas



Contract Verification

Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. *Boycott Israel is defined in Government Code Chapter 808.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. *Boycott energy company is defined in Government Code Chapter 809.*
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. *Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.*

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

By signing below, I verify that the company listed below does not boycott Israel, does not boycott energy companies and does not discriminate against firearms entities or firearm trade associations and will not do so during the term of the contract entered into with the City of Killeen. I further certify that I am authorized by the company listed below to make this verification.

Signature

Sean Spencer

Printed Name

9-2-2022

Date

Heartland Park and Recreation, LLC

Company Name

General Manager

Title